

## REMARKS

The Applicants respectfully request that the foregoing amendments be made prior to examination of the present application.

### **I. Amendments to the Claims**

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claim 41 is amended to correct a typographical error.

Claim 66 is requested to be added. Support for claim 66 is provided in the application as filed, for example at page 6, lines 5-9 of the specification. Claim 66 depends from elected claim 41 and is requested to be examined with the other elected claims.

After amending the claims as set forth above, claims 41-66 are now pending in this application.

### **II. Election and Traversal**

In response to the restriction requirement, the Applicants have elected the subject matter of the claims of Group I with traverse. The Office has asserted that the claims of Group I recite a combination and that the claims of Group II recite a patentably distinct subcombination. First, the Applicants respectfully disagree that the claimed subject matter of Group II is a subcombination of the claimed subject matter of Group I. Rather, the claimed subject matter of Group I and Group II overlap. There are cosmetic compositions comprising combinations of unsaponifiable components that are encompassed by the claims of Group I that are not encompassed by Group II (e.g., a combination of an unsaponifiable component of avocado oil and an unsaponifiable component of soya bean oil). Likewise, there are cosmetic compositions comprising combinations of unsaponifiable components that are encompassed

by the claims of Group II that are not encompassed by Group I (*e.g.*, a combination of an unsaponifiable component of lupin oil and an unsaponifiable component of avocado oil).

However, the Applicants traverse the restriction requirement on the grounds that there is not an undue burden to examine all of the claims of Group I and Group II together. The Applicants believe that the claims of Group I and Group II are sufficiently related such that examination together would not place an undue burden on the Examiner. The Manual of Patent Examining Procedure § 803 states that, if “the search and examination of an entire application can be made without serious burden, [then] the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Claims 41-66 all are directed to cosmetic compositions or uses thereof, where the cosmetic composition comprises at least one unsaponifiable component of a vegetable oil, which is the common feature of the claims. Group I includes claims directed to a cosmetic composition comprising a combination of: (1) at least one unsaponifiable component from avocado oil; (2) at least one unsaponifiable component from soya bean oil, lupin oil, or mixtures thereof; and (3) at least one cosmetically acceptable vehicle for applying the composition to skin. Likewise, Group II includes claims directed to a cosmetic composition comprising a combination of: (1) at least one unsaponifiable component from canola oil, rapeseed oil, sunflower oil, palm oil, maize oil, sesame oil, wheatgerm oil, or mixtures thereof; (2) at least one unsaponifiable component from avocado oil, lupin oil, soya bean oil, or mixtures thereof; and (3) at least one cosmetically acceptable vehicle for applying the composition to the skin.

As shown, Group I and Group II relate to cosmetic compositions comprising at least one unsaponifiable component of a vegetable oil. Thus, a common relationship exists between all claims and there is not an undue burden to examine all of the claims of Group I and Group II together. Accordingly, the Applicant request that the restriction requirement be withdrawn.

**III. Conclusion**

The Applicants believe that the present application is now in condition for allowance. Favorable consideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date

November 6, 2006

By

M. Scott McBride

FOLEY & LARDNER LLP  
Customer No.: 22428

M. Scott McBride  
Attorney for the Applicants  
Registration No. 52,008  
Telephone: (414) 297-5529  
Facsimile: (414) 297-4900